Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258

OPPOSITION TO PETITIONS FOR RECONSIDERATION

THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

Andrew Kreig
President

1140 Connecticut Avenue, N.W.
Suite 810
Washington, D.C. 20036-4001
(202) 452-7823

May 14, 2003

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EXECUTIVE SUMMARY

The Wireless Communications Association International, Inc. ("WCA") requests that the Commission deny the petitions of ICO Global Communications (Holdings) Limited ("ICO"), the Satellite Industry Association ("SIA") and TMI Communications Company, LP ("TMI") for reconsideration of the Commission's decision in its *Third Report and Order* ("*Third R&O*") to reallocate the 1990-2000 MHz and 2020-2025 MHz bands from the Mobile Satellite Service ("MSS") to the Fixed and Mobile services on a primary basis. In particular, ICO, SIA and TMI contend that the Commission should either return the entire 1990-2025 MHz band to MSS or, alternatively, permit MSS to remain at 1990-2010 MHz. There is no reason for the Commission to do either.

Plainly, the Commission's decision was not, as SIA would have it, a "reversal of policy" on global harmonization of spectrum: the Commission's decision to allocate the 1990-2000 MHz band to new terrestrial services is fully consistent with the international allocation for the band, which allows MSS *and* terrestrial fixed and mobile services. Moreover, the rhetoric from SIA and ICO on this issue ignores that global harmonization has never been the Commission's sole concern where domestic spectrum policy is at issue. As pointed out in the *Third R&O*, global harmonization must be balanced against other legitimate public interest considerations, including potential interference to base-to-customer PCS transmissions in the 1930-1990 MHz. ICO, SIA and TMI have little standing to complain about this, since the interference issue is a direct consequence of their own demand for authority to add an ancillary terrestrial component ("ATC") to their satellite operations.

Equally meritless is SIA's suggestion that there is no need for a 10 MHz separation between base-to-customer PCS and customer-to-base MSS if MSS systems attenuate their out-of-band emissions to -70+10 log (P) dB at 1990 MHz. First, as the Commission made clear in its *Report and Order* in IB Docket No. 01-185, "In setting out requirements for attenuating out-of-band emissions by 43+10 log P dB at 2000 MHz and at 70 + 10 log P at 1995 MHz , we would expect that the actual out-of-band emissions in the PCS band at 1930-1990 *would be attenuated even more*." Second, as a practical matter, under SIA's approach MSS licensees will be unable to utilize all of the 1990-2010 MHz band for MSS anyway, since a guardband would be necessary to assure compliance with SIA's proposed -70 +10 log (P) dB out-of-band emissions limit at 1990 MHz. By contrast, the Commission's current rules avoid that problem – MSS licensees engaged in ATC need only meet -43 + 10 log (P) at their band edge, and have an additional 5 MHz to attenuate their signals to -70 +10 log (P). Thus, no MSS spectrum is unavailable for ATC use.

Finally, the Commission should continue to give no credence to ICO's complaint that reallocation of the 1990-2000 MHz band from MSS will subject ICO to undue hardship. ICO's claim arises from its own unilateral decision to construct and launch a satellite system capable of operating domestically over only the 1990-2015 MHz band rather than the entire 1990-2025 MHz MSS uplink band, notwithstanding a prior Commission warning that it was inadvisable to do so. Simply put, ICO prematurely constructed its facilities at its own risk, and the Commission should not put the MDS industry and the AWS allocation process at risk to shield ICO from the consequences of its actions.

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Wireless Communications Association International, Inc. ("WCA"), pursuant to Section 1.429 of the Commission's Rules, hereby opposes the petitions filed by ICO Global Communications (Holdings) Limited ("ICO"),[1] the Satellite Industry Association ("SIA")[2] and TMI Communications and Company, LP ("TMI")[3] seeking reconsideration of the Commission's *Third Report and Order* in the above-captioned proceeding.[4]

I. INTRODUCTION.

In their respective petitions, ICO, SIA and TMI ask the Commission to reconsider its decision to reallocate the 1990-2000 MHz and 2020-2025 MHz bands from the Mobile Satellite Service ("MSS") to the Fixed and Mobile services on a primary basis, alleging that the

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[1] *See* ICO Global Communications Petition for Reconsideration, ET Docket No. 00-258 (filed April 14, 2003) ["ICO Petition"].

[2] *See* Petition for Reconsideration of the Satellite Industry Association, ET Docket No. 00-258 (filed Apr. 14, 2003) ["SIA Petition"].

[3] *See* Petition for Reconsideration of TMI Communications and Company, LP, *et al.*, ET Docket No. 00-258 (filed Apr. 14, 2003) ["TMI Petition"]

[4] *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 18 FCC Rcd 2223 (2003) ["*Third R&O/NPRM*"].

Commission did not give adequate consideration in the *Third Report and Order* to the public interest benefits of MSS.[5] Alternatively, they contend that if 2 GHz MSS is to be limited to 20 MHz in each direction, the Commission should have allowed MSS to remain at 1990-2010 MHz.[6] ICO also reiterates its complaint that reallocation of the 1990-2000 MHz band from MSS will leave it with inadequate spectrum in the MSS uplink band because of its unilateral decision to ignore Commission advice and construct a satellite system capable of operating domestically over less than the entire MSS uplink band.[7] For the reasons discussed below, none of these arguments warrant reconsideration of the Commission's decision to reallocate the 1990-2000 MHz band from MSS.

II. DISCUSSION

The arguments advanced by ICO, SIA and TMI mischaracterize the *Third Report and Order*. SIA, for example, wrongly asserts that the Commission's decision to reallocate globally harmonized MSS spectrum is tantamount to a "reversal of policy."[8] Lost in the argument is the fact that the decision in the *Third Report and Order* to allocate the 1990-2000 MHz band to new terrestrial services is fully consistent with the international allocation for the band, which allows terrestrial mobile and fixed services, as well as MSS.[9] In accusing the Commission of making an unprincipled about-face, ICO, SIA and TMI conveniently ignore that they, and not the

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[5] *See* ICO Petition at 2-4; SIA Petition at 8, 10; TMI Petition at 5-6.

[6] *See* ICO Petition at 5-6; SIA Petition at 3-6; TMI Petition at 6.

[7] *See* ICO Petition at 7.

[8] SIA Petition at 6; *see also* ICO Petition at 5 (alleging that "the Commission has once again changed course and walked away from its own harmonization efforts").

[9] *See* 47 C.F.R. § 2.106. *See also Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957, 4995 (1994)(Referencing the 1980-1990 MHz MSS band, the Commission stated that "these MSS bands are also allocated internationally to fixed and mobile

(continued on next page)

Commission, are responsible for the dramatic change in the interference environment that drove the Commission to assign MSS to the 2000-2020 MHz band. The inescapable fact is that when the Commission initially assigned MSS to the 1990-2025 MHz band, MSS was *a pure satellite service* that was not expected to have a significant interference impact on broadband PCS.[10] The FCC has revisited the question of separation between broadband PCS and MSS because ICO, SIA, TMI and others demanded authority to add an ancillary terrestrial component ("ATC") that poses a significant threat of interference to broadband PCS. Indeed, it would have been a dereliction of the Commission's spectrum management function to authorize ATC without taking steps to protect incumbent service providers from the resulting interference.

While the issue is essentially ignored by ICO and TMI, SIA summarily dismisses the Commission's concerns about potential interference to broadband PCS base-to-customer transmissions in the 1930-1990 MHz band by suggesting that if MSS licensees engaged in ATC attenuate their signals by -70 + 10 log (P) at 1990 MHz, there is no need for a 10 MHz separation between broadband PCS and MSS.[11] That line of argument is troubling for two reasons.

First, it is inconsistent with the Commission's own analysis to suggest that if MSS ATC systems attenuate their out-of-band emissions to -70 + 10 log (P) dB at 1990 MHz, broadband PCS licensees will be in the same position they are in now under the rules adopted in the *Third Report and Order*.[12] Indeed, as the Commission made clear in the *Report and Order* in IB Docket No. 01-185:

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services. PCS , as we have broadly defined it, fits within the international definition of fixed and mobile services and is thus consistent with international agreements on the use of this spectrum.")

[10] *See Third R&O/NPRM* at 2228-29.

[11] *See* SIA Petition at 9.

[12] *See id*.

> In setting out requirements for attenuating out-of-band emissions by 43 + 10 log P dB at 2000 MHz and at 70 + 10 log P at 1995 MHz, we would expect that the actual out-of-band emissions in the PCS band at 1930-1990 MHz would be attenuated even more.[13]

Second, SIA fails to consider the practical limits of filter technology. Significantly, SIA has provided the Commission no evidence that, if permitted to operate at 1990-2010 MHz, 2 GHz MSS licensees could actually meet even a -70 +10 log (P) dB standard at 1990 MHz, much less meet the stricter standard contemplated by the *Report and Order* in IB Docket No. 01-185.[14] That omission is surprising, given the vast attention paid in this docket to the similar question of required separation between broadband PCS base-to-subscriber operations at 1930-1990 MHz and the possible use of 1910-1915 MHz for subscriber-to-base usage. What SIA ignores is that were the Commission to actually adopt SIA's approach, MSS licensees would, as a practical matter, be unable to utilize all of the 1990-2010 MHz band for ATC, as guardband would be required in order to assure compliance with SIA's proposed -70 + 10 log (p) dB out-of-band emissions limit at 1990 MHz. The rules adopted in the *Third Report and Order* wisely avoid that problem – MSS licensees engaged in ATC need only meet -43 + 10 log (p) at their band edge,

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[13] *See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962, 2026 n. 333 (2003).

[14] While ICO suggests that there is an inconsistency between the Commission's decision that a 10 MHz separation is required between MSS/ATC and broadband PCS and its proposal to utilize the 1990-1995 MHz band for MDS, a new AWS service or for accommodating Nextel, nothing could be further from the truth. *See* ICO Petition at 7. Broadband PCS developed in an environment in which MSS was to be a satellite-only service that would primarily serve rural areas, and PCS licensees thus designed their equipment accordingly. If the Commission establishes a new 1910-1915/6 and 1990-1995/6 MHz band pair, licensees in that pairing will be aware of the existence of MSS/ATC from the start and will presumably design their systems accordingly.

and have an additional 5 MHz to attenuate their signals to -70 + 10 log (p) dB. Thus, no MSS spectrum is unavailable for ATC use.[15]

Moreover, the rhetoric from SIA and ICO fails to appreciate that global harmonization has never been the Commission's sole concern where domestic spectrum policy is at issue. While undoubtedly global harmonization is a meritorious objective, it is hardly the only consideration, as evidenced by the fact that MSS has never enjoyed a fully harmonized allocation in the United States. The *Third Report and Order* is instructive on this point, noting that:

> While we recognize that globally harmonized spectrum is an important resource, we share CTIA's concerns regarding potential interference to existing PCS operations at 1930-1990 MHz. We believe that in this instance, these interference concerns outweigh the benefits of increased global harmonized spectrum. We find that we can accommodate the international needs of 2 GHz MSS licensees in the remaining 10 megahertz (uplink) + 20 megahertz (downlink) of overlapping international spectrum. . . . We conclude that our decision to reduce the amount of globally harmonized MSS spectrum that will be available in the United States is appropriate at this time and consistent with the current spectrum requirements for the global portion of the 2 GHz MSS industry.[16]

The Spectrum Policy Task Force recently expressed a similar view, concluding that while international harmonization is important, it is to be balanced against other legitimate Commission objectives.[17]

The Commission's decision in the *Third Report and Order* to impose a 10 MHz separation between broadband PCS and MSS/ATC operations is supported by two domestic considerations that clearly override any of the international concerns cited by SIA, ICO and TMI.

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[15] This problem would be compounded were the Commission to adopt SIA's proposal for pairing the 1910-1915 MHz band with the 2010-2015 MHz band. Were that approach adopted, MSS licensees engaged in ATC would presumably be required to attenuate their signals by at least -70 + 10 log (P) dB at 2010 MHz, which would effectively preclude MSS/ATC use of the spectrum adjacent to 2010 MHz.

[16] *Third R&O/NPRM* at 2241 (footnotes omitted).

First among those objectives is the "good neighbor" policy identified by the Spectrum Policy Task Force.[18] The record in this docket and in IB Docket No. 01-185 is replete with evidence submitted by the broadband PCS carriers and equipment vendors demonstrating that the approach adopted in the *Third Report and Order* is the minimum necessary to protect broadband PCS. Thus, the effort by MSS interests to regain the 1990-2000 MHz band for ATC stands in stark contrast to WCA's pending proposal to relocate Multipoint Distribution Service ("MDS") licensees to the 1910-1916/1990-1996 MHz bands (the "MDS Industry Compromise") in order to accommodate the Commission's desire to clear MDS from the 2150-2162 MHz band and thereby promote Advanced Wireless Services ("AWS") in the 1710-1755/2110-2155 MHz band pair, which is fully compatible with broadband PCS.[19]

The second overriding objective is the Commission's desire to promote a new domestic service that, by using the 1910-1915 MHz band paired with the 1990-1995 MHz band, will enjoy significant economies of scale resulting from the use of spectrum immediately adjacent to the current broadband PCS allocations at 1850-1910 MHz and 1930-1990 MHz.[20] As is discussed at length in the *Third Notice of Proposed Rulemaking* in this docket, there are several possible alternative uses for the band, including the MDS Industry Compromise.[21] Significantly, neither ICO, SIA nor TMI have included in their petitions any meaningful discussion of the MDS

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[17] *See Spectrum Policy Task Force Report*, ET Docket No. 02-135, at 42 (rel. Nov. 15, 2002)("[I]n developing domestic spectrum policies and allocations, the Commission should consider the potential impact on international objectives, *among other objectives*.") (emphasis added).

[18] *See id*. at 22.

[19] *See* Letter from Wireless Communications Ass'n Int'l *et al.*, to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 (filed July 11, 2002). The full text of the proposal, titled "A Compromise Solution for Relocating MDS From 2150-2162 MHz," was attached to that letter and is referred to herein as the "MDS Industry Compromise."

[20] *See Third R&O/NPRM* at 2247-48.

Industry Compromise, and make no serious attempt to identify any alternative relocation spectrum for MDS. By contrast, the above-cited factors were given careful consideration in the *Third Report and Order*, in which the Commission concluded that:

> After careful consideration of the record, we conclude that, on balance, the benefits to the public of providing additional spectrum for Fixed and Mobile services that overlaps the international 2 GHz MSS band outweigh the impact on MSS. Our decision is to reallocate MSS spectrum in a way that will allow new entrants to take advantage of economies of scale in developing and deploying new services while maintaining sufficient international MSS spectrum.[22]

In view of the above, it is surprising that SIA would even suggest (albeit without any support) that "identical economies" could be realized by pairing 1910-1915 MHz with 2010-2020 MHz.[23] Such a pairing would have a 100 MHz separation between upstream and downstream channels, in contrast to the 80 MHz separation between the broadband PCS upstream and downstream bands. It is an almost trivial task to redesign handsets to keep the same 80 MHz upstream/downstream separation between paired channels, but expand the PCS bands to 1850-1915 MHz and 1930-1995 MHz. As recognized in the *Third Report and Order,* "pairing these bands could allow for use of existing PCS equipment with little modification and easier manufacture and design of equipment, thereby enabling significant economies of scale."[24] However, the cost of redesigning handsets to accommodate a new, unique 100 MHz separation between channels at 1910-1915 MHz and 2010-2015 MHz would be significant. Since handset manufacturers could not utilize a single duplex filter that would be open to the entire 1930-2015 MHz without subjecting the handset to interference from MSS/ATC at 1990-2010 MHz, it would

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[21] *See id.*

[22] *Id*. at 2241.

[23] *See* SIA Petition at 7.

[24] *Third R&O/NPRM* at 2247.

be necessary to add a second duplexer to existing handset designs to utilize this new band. In addition, it would be necessary to either add a second receive local oscillator or develop new circuitry which derives the new non standard L.O. from the existing oscillators. And, contrary to SIA's unsupported assertion, the economies predicted by the *Third Report and Order* will be realized whether the 1910-1916/1990-1996 MHz bands are used for a new AWS allocation, for relocating MDS licensees from the 2150-2162 MHz band, or for relocating Nextel as part of an 800 MHz band realignment.[25]

It is also worth noting that the "global harmonization" argument being advanced by ICO, SIA and TMI ignores that the Commission's system for licensing spectrum to 2 GHz MSS licensees, under which each MSS licensee chooses its 3.5 MHz assignment in each direction, has never assured every 2 GHz MSS licensee of globally harmonized spectrum and, indeed, it has essentially guaranteed that some MSS licensees would not secure any globally harmonized spectrum. Strangely, the MSS community never raised that as a problem before, and one has to suspect that the current recitation of the "global harmonization" mantra is more about recapturing spectrum than global harmonization.

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[25] *See id.* at 2248. While SIA suggests that MDS "might benefit significantly from an allocation contiguous to the 2020-2025 MHz band, which the Commission is considering for new fixed and mobile services, such as AWS," SIA provides no explanation and WCA is at a loss to imagine any. SIA Petition at 7-8 (footnote omitted). Indeed, SIA's position cannot be squared with the significant record developed in response to the *Third Notice of Proposed Rulemaking* in this docket to the effect that the 2020-2025 MHz band will have limited utility because of potential interference to and from Broadcast Auxiliary Service operations in the immediately adjacent spectrum above 2025 MHz. *See* Wireless Communications Ass'n Int'l Reply Comments in Response to Third Notice of Proposed Rulemaking, ET Docket NO. 00-258, at 7-8 (filed Apr. 28, 2003); Reply Comments of Ericsson, Inc., ET Docket No. 00-258, at 3 (filed Apr. 28, 2003).

Moreover, the SIA proposal to create an AWS allocation at 1910-1915/2010-2015 MHz fails to consider the significant interference implications that would result were MSS/ATC to operate upstream in the 1990-2010 MHz band and an new PCS-like service use the 2010-2015 MHz band for downstream communications.

Finally, the Commission should continue to lend no credence to ICO's complaint that reallocation of the 1990-2000 MHz band from MSS will subject ICO to undue hardship, since it unilaterally chose to construct and launch a satellite system capable of operating domestically over only the 1990-2015 MHz band rather than the entire 1990-2025 MHz MSS uplink band.[26] As WCA has already pointed out (and the Commission apparently agrees), ICO's purported wounds plainly are self-inflicted.[27] Notwithstanding the Commission's prior warning that satellite applicants assume the risk of premature construction, ICO chose to commence construction of its satellites over 18 months before the Commission had even proposed rules for MSS licensing.[28] ICO also chose to launch its first satellite several months before the Commission issued its MSS licensing rules, and, after that satellite was destroyed by a launch vehicle failure, ICO launched its second satellite on June 19, 2001, before it had been issued a license by the Commission.[29] Now, having elected to prematurely construct and launch a

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[26] *See* ICO Petition at 7.

[27] *See* Letter from Wireless Communications Ass'n Int'l *et al.*, ET Docket No 00-258 *et al.*, at 5-6 (filed Sept. 5, 2002).

[28] *See* 47 C.F.R. §25.113(f); *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21585 (1996) ("We underscore again that any [premature] construction will be at the applicant's own risk, and we will not in any way consider the status of construction or expenditures made when acting on the underlying application."). According to ICO's prior filings with the Commission, ICO commenced construction of its satellites on September 1, 1997. *See* ICO Services Limited Section 25.143 Annual Report and Certification of Construction Milestones, File No. 188-SAT-LOI-97 *et al.*, at 2-3 (Oct. 22, 2001) [the "ICO Certification Letter"]. The Commission released its *Notice of Proposed Rulemaking* for its MSS licensing rules on March 25, 1999. *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843 (1999). In addition, the fact that ICO is operating a non-U.S. licensed satellite system does not insulate it from the Commission's rules and policies on premature construction. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service*, 12 FCC Rcd 24094, 24174 n. 359 (1997) ("We reiterate our intent to hold non-U.S. satellite operators to the same rules as we do our U.S. licensed space station operators.").

[29] *See* ICO Services Limited Section 25.143 Report, attached to the ICO Certification Letter, at 1. ICO launched its first satellite on March 12, 2000; the Commission did not issue its MSS licensing rules until August 25, 2000, and ICO did not receive a license until July 17, 2001. *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127 (2000) ["*2 GHz*

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satellite that is unable to operate over the entire 1990-2025 MHz band, ICO asks the Commission to compound the problem by hoarding the 1990-1996 MHz band for MSS at the expense of MDS licensees and consumers who stand to benefit directly from immediate adoption of the MDS Industry Compromise. The Commission, however, put all MSS system proponents on notice that "it is important to design and launch 2 GHz MSS systems with sufficient flexibility to address coordination and band arrangement contingencies… *We encourage system proponents to design their systems to be able to operate across more than 70 percent of the 2 GHz MSS bands in order to be able to provide the maximum amount of flexibility.*"[30] ICO ignored the Commission's admonition at its own peril, and thus the Commission should not put the MDS industry and the AWS allocation process at risk to shield ICO from the consequences of its actions. Thus, the *Third Report and Order* got it right – "ICO constructed its system at its own risk prior to receiving a U.S. authorization. Nonetheless, the ICO system is capable of operating across the revised allocated MSS bandwidth, and thus the economic impact on ICO should be minimal."[31]

MSS Order"]; *ICO Services Limited – Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, 16 FCC Rcd 13762 (Int. Bur., rel. July 17, 2001) ["*ICO Licensing Order*"]. The Commission's proposal in this docket to reallocate a portion of the MSS 2 GHz allocation for AWS should have come as no surprise to ICO. *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 16 FCC Rcd 16043, 16048, 16055 (2001). Indeed, the implosion of the MSS industry had been matter of public record prior to ICO's launch of its second satellite – in turn, the MSS industry's failure prompted CTIA to file a Petition for Rulemaking on May 18, 2002 (one month before ICO's launch of its second satellite), asking the Commission to reallocate the *entire* MSS 2 GHz allocation for AWS. The International Bureau subsequently limited the amount of spectrum licensed to ICO, noting the possibility that MSS spectrum might be reallocated for terrestrial use pursuant to the CTIA Petition. *See ICO Licensing Order*, 16 FCC Rcd at 13765 n.30.

[30] *2 GHz MSS Order*, 15 FCC Rcd at 16152 (emphasis added).

[31] *Third R&O/NPRM* at 2242 n. 104.

III. CONCLUSION

In sum, nothing in the ICO, SIA and TMI petitions refutes the Commission's rationale for reallocating the 1990-2000 MHz band from MSS to solely the Fixed and Mobile services. WCA therefore requests that the ICO, SIA and TMI petitions for reconsideration be denied.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

By: /s/ Andrew Kreig
Andrew Kreig
President

1140 Connecticut Avenue, N.W.
Suite 810
Washington, D.C. 20036-4001
(202) 452-7823

May 14, 2003

CERTIFICATE OF SERVICE

I, LaTashia T. Williams, hereby certify that the foregoing Opposition to Petitions for Reconsideration have been served this 14th day of May, 2003 by depositing copies with the United States Postal Service, first class mail postage prepaid, addressed as follows:

Richard DalBello
Satellite Industry Association
225 Reinekers Lane, Ste. 600
Alexandria, VA 22314

Mark A. Grannis
Christopher J. Wright
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

Lawrence H. Williams
Suzanne Hutchings
ICO Global Communications (Holdings) Ltd.
1730 Rhode Island Ave., N.W., Ste. 100
Washington, D.C. 20036

Gregory C. Staple
R. Edward Price
Vinson & Elkins LLP
1455 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Jonathan D. Blake
Gerard J. Waldron
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

/s/
LaTashia T. Williams